

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JABARR ROSSER : CIVIL ACTION
 :
 v. :
 :
 :
 THE CITY OF PHILADELPHIA, et al. : NO. 05-514

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE:

In this false arrest and imprisonment case, filed under 42 U.S.C. § 1983, plaintiff Jabarr Rosser has moved to compel responses to discovery requests seeking the identity of the confidential informant who allegedly bought drugs from Rosser, leading to his arrest. Alternatively, he asks that he be permitted to depose the confidential informant. For the reasons below, I will permit Plaintiff's counsel to learn the identity of the informant **on a confidential basis**, and to depose him or her outside of the presence of Rosser or any other individual other than Defendants and their counsel.

I. Discussion

According to defendant police officers, they observed their confidential informant approach Rosser as he stood alone on a street where drug trafficking had been known to occur. They maintain that their confidential informant gave Rosser a pre-marked \$20 bill, and that Rosser then entered a nearby alley, returned a few minutes later, and handed the informant items too small for the watching officers to identify. According to Defendants, the informant gave them four packets of crack cocaine which Rosser had given to the informant. Rosser was arrested shortly thereafter, and, according to Defendants, the marked \$20 bill was on his person.

Rosser, however, argues that he was targeted for arrest and prosecution because he is the cousin of Anthony Rosser, whose civil rights case against the same defendant police officers was settled. In his Complaint, Rosser has alleged that “at no time did [he] commit any offense against the laws of the Commonwealth of Pennsylvania for which an arrest may be lawfully made.” Complaint at ¶ 20. According to Rosser, “there is no substantive evidence that a confidential informant for this case even exists, let alone corroboration of the underlying facts of the alleged narcotics buy.” Memorandum in Support of Motion at 3.

Defendants have attached to their response to this motion (a) an arrest report reflecting the use of a confidential informant; and (b) a Narcotics Bureau Voucher and Confidential Information Contact Form, apparently signed by the informant (the signature is redacted). However, the reliability of this information is only as strong as the trustworthiness to which defendant police officers are entitled. As noted, Rosser claims that the officers are not trustworthy, and that they unlawfully conspired against him.

The Court is well aware of the validity and importance of confidential information in law enforcement. See Mitchell v. Roma, 265 F.2d 633, 635 (3d Cir. 1959). Nevertheless, the privilege for communications by informers has been said to give way where the disclosure of an informer’s identity is essential to a fair determination of a cause. Mitchell, supra, at 265 F.2d 635-636. In this case, it is not clear how Rosser can explore the basis for his arrest without speaking to the one witness to his alleged misdeeds who is not a defendant in this action. On these facts, I find that the disclosure of the informer’s identity is essential to a fair determination of Rosser’s claims. At the same time, I recognize the concerns Defendants have raised as to the need to protect the utility – and the physical safety – of the informant.

Accordingly, I will enter the following:

ORDER

AND NOW, this day of June, 2005, upon consideration of Plaintiff's Motion to Compel, docketed in this case as Document No. 8, and Defendants' response thereto, it is hereby ORDERED that Plaintiffs' Motion is GRANTED:

1. Within one week of the date of this Order, Defendants shall reveal the identify of the confidential informant in this case **solely** Plaintiff's Counsel, Michael Pileggi. Mr. Pileggi shall not reveal this information to his client or to any other individual;
2. Mr. Pileggi shall be permitted to depose the confidential informant at a time within the scheduled discovery period which is convenient to all concerned, such deposition to be taken out of the presence of Plaintiff Jabarr Rosser, or any other individual other than Defendants and counsel for Defendants. The transcript of this deposition is to be treated as confidential, and shall not be disclosed to individuals other than Mr. Pileggi, Defendants, and counsel for Defendants.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE